No. 605

In the Supreme Court of the United States

OCTOBER TERM, 1958

HAROLD JOHNSON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1–4; A. 33–36)[1] is reported at 260 F. 2d 508.

JURISDICTION

The judgment of the court of appeals (Pet. App. 5; A. 37) was entered on October 27, 1958 (A. 37). A petition for rehearing was denied on November 25, 1958 (Pet. App. 6; A. 38). The petition for a writ of certiorari was filed on December 26, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

[1] "A." refers to the Appendix filed in the court of appeals.

QUESTION PRESENTED

Whether the evidence was sufficient to support the verdict.

STATUTE INVOLVED

21 U.S.C. 174 provides as follows:

> Whoever fraudulently or knowingly imports or brings any narcotic drug into the United States or any territory under its control or jurisdiction, contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of any such narcotic drug after being imported or brought in, knowing the same to have been imported contrary to law, or conspires to commit any of such acts in violation of the laws of the United States, shall be fined not more than $2,000 and imprisoned not less than two or more than five years. * * *.
>
> Whenever on trial for a violation of this section the defendant is shown to have or to have had possession of the narcotic drug, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant explains the possession to the satisfaction of the jury.

STATEMENT

In a trial without a jury, petitioner was found guilty of knowingly receiving, concealing and facilitating the transportation or sale of heroin, knowing the same to be imported into the United States, in violation of 21 U.S.C. 174 (A. 3, 4). He was sentenced to a term of imprisonment for a period of 5

years (A. 4).[2] On appeal, the judgment of conviction was affirmed (A. 37).

The evidence adduced at the trial was as follows:

On February 11, 1958, Government agents surveilling petitioner saw him drive by in a car with co-defendant Juanita Warren in the front seat and another person in the back seat. Agent Graf stopped the car. He testified on direct examination that as he went to the driver's side, but before he opened the door, he saw petitioner hand a brown paper bag to Juanita Warren. He then opened the door, ordered all the occupants out of the car and arrested them (A. 7). Agent Eckhardt testified that he saw Juanita Warren get out of the car on the passenger side, walk around to the other side of the car and drop a package (A. 17). Another agent, Robert Taylor, testified that he saw all three passengers leave the car, as ordered, and saw a package slip from Juanita Warren's skirt as she left the car. He picked up the package, found that it was a brown bag which contained manila envelopes and gave it to Agent Graf (A. 7, 8, 23).[3] Upon analysis, the envelopes were found to contain heroin hydrochloride (A. 28).

On appeal and here, petitioner's complaint about the evidence relates largely to discrepancies in the testimony of Government witnesses as follows:

Agent Graf, on cross-examination, testified as to the brown paper bag that "I don't know who handed it

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[2] His co-defendant, Juanita Warren, was found not guilty.

[3] Agent Graf searched both defendants and the car at the time of the arrest but did not find a bag either on them or in the car (A. 14).

to whom * * * I did not know whether Johnson was handing this brown paper bag to Warren or whether Warren was passing it to him. I did not see it at that time" (A. 13–14). He further testified on cross-examination "I couldn't positively say that at any time I saw defendant Harold Johnson with Exhibit 1 (the narcotics) in his possession. I cannot say that I ever saw him with Exhibit 1 in his possession. I cannot say that I ever saw the defendant, Juanita Warren, with Exhibit 1 in her possession * * *. I couldn't specifically say that I saw the defendant, Harold Johnson, with any narcotics in his possession on the night of February 11, 1958" (A. 15–16).

Agent Ralph Eckhardt testified that the package which Juanita Warren dropped was "picked up and thrown away." Then he said that he did not notice the article that was dropped until it was shown to him by Agent Taylor (A. 17). He did not see Taylor pick up the package and did not know that Taylor had picked it up until Taylor showed him the package. Eckhardt could not identify the object, but he was certain that he saw an object fall from Juanita Warren (A. 17, 18, 20, 21). Eckhardt further testified that he did not see any narcotics in petitioner's or Juanita Warren's possession (A. 21).

Agent Taylor was consistent in his testimony both on direct and cross-examination.

Petitioner, testifying on his own behalf, denied the possession of any narcotics and denied that he handed any package to Juanita Warren (A. 29–31).

The trial court, on the basis of the foregoing evidence, found that petitioner had possession of the

narcotics and that, because he had a criminal record, "when he saw what was happening," he handed over the narcotics to Juanita Warren (A. 31).

ARGUMENT

Petitioner attacks only the weight of the evidence, an inquiry foreclosed by the verdict of the court. *Craig* v. *United States,* 81 F. 2d 816, 827 (C.A. 9). This Court, in examining the record, must take the view of the evidence most favorable to the Government and must give to the Government the benefit of all the inferences which reasonably may be drawn from the evidence. *Glasser* v. *United States,* 315 U.S. 60. The weight to be given to testimony in the face of inconsistencies and the resolution of conflicting testimony is for the trier of fact. The record here shows, as both courts below held (*Kann* v. *United States,* 323 U.S. 88, 93; *United States* v. *Johnson,* 319 U.S. 503, 518; *Delaney* v. *United States,* 263 U.S. 586, 589–590), that substantial evidence supports the verdict. There is no occasion for further review of the evidence by this Court.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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